IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JAIPUR BENCH, JAIPUR

::ORDER::

CAPT. RAJAT CHOUDHARY VS. S.P. (SOUTH) JAIPUR CITY, JAIPUR AND ORS.

D.B.CIVIL HABEAS CORPUS PETITION NO.743/2007 UNDER ARTICLE 226, R/W 21 OF THE CONSTITUTION OF INDIA FOR RPODUCTION OF MINOR DAUGHTER OF THE PETITIONER FROM THE ILLEGAL CUSTODY OF RESPONDENTSS NO.2 & 3.

DATE OF ORDER ::: 2.2.2007

PRESENT
HON'BLE MRS.GYAN SUDHA MISRA,J.
HON'BLE MR.K.C.SHARMA,J.

Mr. Shiv Charan Gupta for the petitioner.

BY THE COURT:

This is a petition which ostensibly has been filed in the nature of a habeas Corpus petition by the petitioner-Capt.Rajat Choudhary alleging illegal detention of his daughter who is four years old. It has been alleged therein that the child is under illegal detention of her maternal grand-parents who are respondents Nos.2 & 3 herein. Respondent No.4-Mrs. Manu Choudhary is the wife of the petitioner and is the mother of the child.

It hardly needs to be recorded that a petition for habeas corpus can be entertained provided the court is satisfied that the alleged detenu is under the illegal

detention of someone. In the instant matter it is obvious from the facts of the case that there is a fight for the custody of the child between the father and the mother along with the maternal grand-parents with whom the child is living at present. Thus, the child prima facie cannot be held to be under the illegal detention as she obviously is living with some-one who can be said to be her guardian although not her parents. Thus, this petition cannot be treated as a petition for habeas corpus so as to issue direction for her production. However, to cut short the controversy, we direct the petitioner to obtain the consent of the mother as to whether she is interested in allowing her daughter to be handed over to the petitioner-father as the facts are not available under what circumstance the child is living with her grant-parents. Hence, the petitioner is at liberty to approach the Family Court for obtaining the custody of the child and it is for the Family Court to consider the welfare of the child as also the interest which is best suited to the so called detenu.

Under the existing facts and circumstances, a petition for habeas corpus, which is essentially a contest for obtaining custody of the child, cannot be entertained. The habeas Corpus petition therefore, stands dismissed as not maintainable.

In the interest of equity and at the request of the counsel for the petitioner, we also deem it appropriate to

observe that if the petitioner moves the Family Court for custody of the child, an enquiry be held into the back ground of the matter as also the circumstance whether a child who is quarter to four years old should be allowed to live with her grand parents or she should be handed over to her father as the mother has not left her daughter to the petitioner-father and it is for the Family Court to deliver an independent decision in this regard which will be binding on the contesting parties.

(K.C.SHARMA)J. (GYAN SUDHA MISRA)J.

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